



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steve Robertson, Chairman
Republican Party of Kentucky
Post Office Box 1068
Frankfort, Kentucky 40602

FEB 18 2009

RE: MUR 6006
Friends of Bruce Lunsford and
Karen Sensenbrenner, in her
official capacity as treasurer
Bruce Lunsford

Dear Mr. Robertson:

This is in reference to the complaint you filed with the Federal Election Commission on May 1, 2008, concerning Friends of Bruce Lunsford and Karen Sensenbrenner, in her official capacity as treasurer, and Bruce Lunsford. On February 3, 2009, the Commission voted to dismiss this matter and closed the file. The Factual and Legal Analysis explaining the Commission's decision is enclosed. Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
General Counsel

A handwritten signature in cursive script, appearing to read "Susan L. Lebeaux".

BY: Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT: Friends of Bruce Lunsford and Karen**
6 **Sensenbrenner, in her official capacity**
7 **as treasurer**
8 **Bruce Lunsford**

MUR: 6006

9
10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 ("Commission") by Steve Robertson, Chairman of the Republican Party of Kentucky. See
13 2 U.S.C. § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint
14 alleging that Friends of Bruce Lunsford and Karen Sensenbrenner, in her official capacity as
15 treasurer (the "Committee"), and Bruce Lunsford violated 2 U.S.C. § 441d(d)(1)(B) and
16 11 C.F.R. § 110.11(c)(3) by knowingly and willfully failing to include a "stand-by-your-ad"
17 disclaimer during a live interview broadcast on television, and closed the file.

18 **II. DISCUSSION**

19 **A. Factual Summary**

20
21 On April 21, 2008, Bruce Lunsford appeared on "Louisville Live this Morning," a
22 weekday television program broadcast in the Louisville, Kentucky area on the CW network
23 affiliate, WBKI-TV (the "broadcast"). A representative from WBKI-TV had previously invited
24 Lunsford to appear on the program, noting that it would feature "the incumbents, the candidates
25 running against them, and the important issues the public needs to know about." The invitation
26 further stated that "[e]ach guest will receive a four minute segment to discuss the issues and
27 where they stand," and "[t]he interviewer will give each candidate a chance to state their views
28 and how they will be able to help the community." The station told the Committee that it had

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1 extended this offer to all Democratic primary candidates running in the May 20, 2008 primary
2 election. While the invitation stated that the cost of appearing on the show was \$200, the
3 Committee later called the station and found out that the first four minutes would be free, but if
4 the candidate wanted an extended segment it would cost \$200. The Committee acknowledges in
5 its response to the complaint that it paid the \$200 for the extended segment. Lunsford was the
6 only candidate on the April 21, 2008 edition of the program, and the available information does
7 not identify any other candidates who accepted the interview offer and appeared on the program
8 on other dates; the complaint states that one of the other candidates, Greg Fischer, did not accept
9 the offer.

10 According to a DVD of the broadcast attached to the complaint, the extended segment
11 was three minutes long, and both the regular and extended segments consisted entirely of an
12 interview format in which the host of the show asked Lunsford questions. The broadcast was
13 live and unscripted, although the Committee provided a list of suggested questions to be asked of
14 Lunsford during the interview. While the Committee claims that the show's host "ignored" the
15 questions, the substance of most of the questions was covered during the interview. According
16 to the Committee, neither it nor Lunsford had editorial control or control over the questions
17 actually asked, the setting, or the timing of the broadcast.

18 Throughout the broadcast segment, the bottom of the screen alternated from displaying
19 the Committee's telephone number and website to Lunsford's name and the title "Democratic
20 U. S. Senate candidate." Near the end of the broadcast, the Committee's mailing address,
21 telephone number and website appeared in a full-screen display. The host of the program
22 concluded the interview segment with the following statement:

1 Just to let you know, we are an entertainment show, not necessarily a newscast,
2 and the Lunsford for Senate campaign today paid for the extended segment to be
3 able to discuss the important issues beyond the 30-second commercial or 10-
4 second sound bite, and the same opportunity has been made available to all
5 candidates in the Kentucky primary.

6
7 **B. Analysis**

8 Under the Federal Election Campaign Act of 1971, as amended, television
9 communications paid for or authorized by a candidate, an authorized political committee of a
10 candidate, or its agents, must include, *inter alia*, an oral statement or voiceover that identifies the
11 candidate and states he has approved the communication, and in which the candidate appears on-
12 camera making the statement or his photograph appears during the statement (a so-called "stand-
13 by-your-ad" disclaimer). 2 U.S.C. § 441d(d)(1)(B)(i); 11 C.F.R. § 110.11(c)(3)(ii).

14 Additionally, the "stand-by-your-ad" requirements specify that the text of the statement must
15 appear on the screen for at least four seconds in an easily readable manner with a reasonable
16 color contrast. 2 U.S.C. § 441d(d)(1)(B)(ii); 11 C.F.R. § 110.11(c)(3)(iii).

17 In its response to the complaint, the Committee disputes the allegation that a disclaimer
18 was required, stating that it was impracticable to comply with the "stand-by-your-ad"
19 requirements because it did not have control of the broadcast and there was no place to run a
20 written disclaimer because the interview was part of a live half hour program. The Committee
21 states the interview was continuous from the nonpaid to the paid segments and, therefore, it
22 would have been impracticable to provide a disclaimer for half of an interview. The Committee
23 also states Lunsford substantially complied with any applicable disclaimer requirements because
24 he appeared live and responded to the host's questions, thereby approving all of his remarks.
25 Further, it argues that there was no need to say he approved the contents of the broadcast because

1 they were his own statements. Finally, the Committee argues that this matter should be
2 dismissed because the \$200 charge represents a *de minimus* amount.¹

3 This is a matter of first impression concerning the applicability of the "stand-by-your-ad"
4 requirements to live, unscripted and unedited interviews paid for by candidates or political
5 committees instead of a pre-recorded advertisement. Moreover, it involves a live interview
6 within a television program that combines elements of news, local interest and entertainment but
7 does not clearly fit into one of those separate categories, with the Committee paying for only a
8 portion of the interview. The interview ran for approximately seven minutes of the half-hour
9 regularly scheduled television show, and the paid segment consisted of less than half of the
10 interview.

11 The purpose of the "stand-by-your-ad" requirements is to "hold candidates personally
12 responsible and accountable for their advertisements." See MUR 5432 (Summers-O'Neal)
13 Statement of Reasons of Vice Chairman Toner and Commissioners McDonald and Weintraub
14 (citing Sen. Wyden, Cong. Record, S2174, Mar. 20, 2002). Neither the legislative history nor the
15 Explanation and Justification published in the Federal Register mention or address the issue of a
16 live broadcast.² See Disclaimers, *et. al.*, 67 Fed. Reg. 76962 (Dec. 13, 2002). When the statute
17 and subsequent regulation were drafted, it is likely that the issue of a candidate appearing on a

¹ The Committee also maintains that the complaint should be dismissed because the broadcast is exempt from the disclaimer requirements since it falls under the media exemption for expenditures and electioneering communications. See 2 U.S.C. § 431(9)(B). However, the media exemption only applies to media organizations and, since there is no allegation against the television station, the Commission need not address this issue. See Internet Communications, 71 Fed. Reg. 18589, 18607 (April 12, 2006) (citing the legislative history of the statute in stating that "the 'media exemption' recognizes 'the unfettered right of the newspapers, television networks, and other media to cover and comment on political campaigns.'" (Emphasis in original)).

² In AO 2004-1 (Bush/Forgey Kerr) the Commission, addressing another "stand-by-your-ad" disclaimer issue that apparently had not been contemplated when the statute was drafted, did not require both candidates featured in one advertisement to each make a separate oral "stand-by-your-ad" disclaimer, but instead allowed one candidate to make the statement for both, because the statute did not "anticipate multiple candidates."

1 live unscripted interview was not contemplated since a statement of approval would be
2 superfluous, and the absence of a "stand-by-your-ad" statement would not result in any
3 diminishment of candidate accountability for what was said. While there was neither a written
4 nor an oral "stand-by-your-ad" disclaimer by the candidate in this case, Lunsford, who
5 spontaneously answered questions during the entire live broadcast, in effect approved of and took
6 responsibility for his answers. Thus, Lunsford's appearance on the television program in
7 question effectively satisfied the spirit of the "stand-by-your-ad" requirements, if not the
8 requirements themselves.

9 This case also involved a *de minimus* amount. See Statement of Policy Regarding
10 Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg.
11 12545, 12545-6 (Mar. 16, 2007).

12 Therefore, the Commission has decided to dismiss the complaint and has closed the file.